

# COPY

Attorney Docket No.: 16807-001510U

## DECLARATION

As a below named inventor, I declare that:

My residence, post office address and citizenship are as stated below next to my name; I believe I am the original, first and so inventor (if only one name is listed below) or an original, first and joint inventor (if plural inventors are named below) of the subject matter which is claimed, and for which a patent is sought on the invention entitled: **APPARATUS AND METHOD FOR TREATING TUMORS NEAR THE SURFACE OF AN ORGAN** the specification of which      is attached hereto or **XX** was filed on **JULY 14, 1999** as Application No. **09/354,379** and was amended on                      (if applicable).

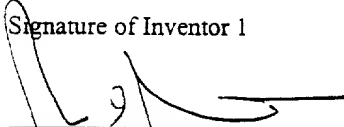
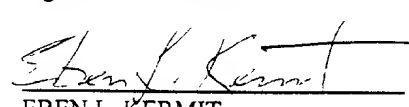
I have reviewed and understand the contents of the above identified specification, including the claims, as amended by an amendment referred to above. I acknowledge the duty to disclose information which is material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56. I claim foreign priority benefits under Title 35, United States Code, Section 119 of any foreign application(s) for patent or inventor's certificate listed below and have also identified below any foreign application for patent or inventor's certificate having a filing date before that of the application on which priority is claimed.

I claim the benefit under Title 35, United States Code, Section 120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in the prior United States application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose material information as defined in Title 37, Code of Federal Regulations, Section 1.56 which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Application No.	Date of Filing	Status
09/124,152	JULY 28, 1998	PENDING

Full Name of Inventor 1:	Last Name: <b>BEHL</b>	First Name: <b>ROBERT</b>	Middle Name or Initial: <b>S.</b>
Residence & Citizenship:	City: <b>Palo Alto</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>United States</b>
Post Office Address:	Post Office Address: <b>361 Tioga Court</b>	City: <b>Palo Alto</b>	State/Country: <b>California</b> Postal Code: <b>94036</b>
Full Name of Inventor 2:	Last Name: <b>KERMIT</b>	First Name: <b>EBEN</b>	Middle Name or Initial: <b>L.</b>
Residence & Citizenship:	City: <b>Menlo Park</b>	State/Foreign Country: <b>California</b>	Country of Citizenship: <b>United States</b>
Post Office Address:	Post Office Address: <b>2066 Oakley Avenue</b>	City: <b>Menlo Park</b>	State/Country: <b>California</b> Postal Code: <b>94025</b>

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Signature of Inventor 1	Signature of Inventor 2
	
ROBERT S. BEHL	EBEN L. KERMIT
Date 12/8/99	Date 12/8/99

**COPY**

Attorney Docket No. 16807-001510

**POWER OF ATTORNEY BY ASSIGNEE**

**RADIOTHERAPEUTICS CORPORATION**, 2660 Marine Way, Suite 200,  
Mountain View, California 94043, is the Assignee of the invention entitled:

**APPARATUS AND METHOD FOR TREATING TUMORS NEAR  
THE SURFACE OF AN ORGAN**

The specification of which    is attached hereto or XX was filed on JULY 14, 1999 as  
Application No. 09/354,379.

The Assignment accompanying this Power of Attorney has been reviewed by the undersigned. The undersigned certifies that to the best of the undersigned's knowledge and belief, title is in the Assignee. The undersigned (whose title is supplied below) is empowered to act on behalf of the Assignee.

Assignee hereby appoints the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark Office connected therewith.

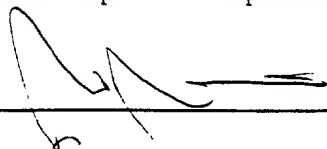
<u>Name</u>	<u>Reg. No.</u>	<u>Name</u>	<u>Reg. No.</u>
Aka, Gary T.	29,038	Heckadon, David R.	Granted Limited Recognition under 37 CFR §10.9(b)
Apple, Randolph T.	36,429		
Barrish, Mark D.	36,443	Heslin, James M.	29,541
Colwell, Robert C.	27,431	Liebeschuetz, Joe	37,505
Dow, Karen B.	29,684	Powers, Margaret A.	39,804
Gibby, Darin J.	38,464	Slone, David N.	28,572
Hann, James F.	29,719	Smith, William M.	30,223
Haughey, Paul C.	31,836	Storella, John R.	32,994
		Wong, Craig P.	P45,231

Send Correspondence to:  
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San Francisco, CA 94111-3834

Direct Telephone Calls to:  
James M. Heslin, Esq.  
Reg. No. 29,541  
650/326-2400

RadioTherapeutics Corporation

Date: 12/8/99

By: 

Title: Chief Counsel

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Attorney Docket No.: 16807-001510U

VERIFIED STATEMENT (DECLARATION) CLAIMING SMALL ENTITY STATUS  
(37 CFR 1.9(f) & 1.27(c)) - SMALL BUSINESS CONCERN

Applicant or Patentee: ROBERT S. BEHL et al.  
Application or Patent No.: 09/354,379  
Filed or issued: JULY 14, 1999  
Title: APPARATUS AND METHOD FOR TREATING TUMORS NEAR THE SURFACE OF AN ORGAN

I hereby declare that I am:

- ☐ the owner of the small business concern identified below:  
☒ an official of the small business concern empowered to act on behalf of the concern identified below.

Name of Small Business Concern: RadioTherapeutics Corporation  
Address of Small Business Concern: 2660 Marine Way, Suite 200  
Mountain View, CA 94043

I hereby declare that the above-identified small business concern qualifies as a small business concern as defined in 13 CFR 121.12, and reproduced in 37 CFR 1.9(d) for purposes of paying reduced fees to the United States Patent and Trademark Office, in that the number of employees of the concern, including those of its affiliates does not exceed 500 persons. For purposes of this statement, (1) the number of employees of the business concern is the average over the previous fiscal year of the concern of the persons employed on a full-time, part-time or temporary basis during each of the pay periods of the fiscal year, and (2) concerns are affiliates of each other when either, directly or indirectly, one concern controls or has the power to control the other, or a third party or parties controls or has the power to control both.

I hereby declare that rights under contract or law have been conveyed to and remain with the small business concern identified above with regard to the invention entitled APPARATUS AND METHOD FOR TREATING TUMORS NEAR THE SURFACE OF AN ORGAN by inventor(s) described in:

- ☐ the specification filed herewith;  
☒ Application No. 09/354,379, filed JULY 14, 1999;  
☐ Patent No. \_\_\_\_\_, issued \_\_\_\_\_

If the rights held by the above identified small business concern are not exclusive, each individual, concern or organization having rights in the invention is listed below\* and no rights to the invention are held by any person, other than the inventor, who would not qualify as an independent inventor under 37 CFR 1.9(c) if the person made the invention, or by any concern that would not qualify as a small business concern under 37 CFR 1.9(d), or a nonprofit organization under 37 CFR 1.9(e)

\*NOTE: Separate verified statements are required from each named person, concern or organization having rights to the invention averring to their status as small entities. (37 CFR 1.27)

Name: ///  
Address: \_\_\_\_\_

☐ Individual ☐ Small Business Concern ☐ Nonprofit Organization

I acknowledge the duty to file, in this application or patent, notification of any change in status resulting in loss of entitlement to small entity status prior to paying, or at the time of paying, the earliest of the issue fee or any maintenance fee due after the date on which status as a small entity is no longer appropriate. (37 CFR 1.28(b))

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Name of Person Signing: ROBERT S BEHL

Title of Person if Other than Owner: CHAIRMAN

Address of Person Signing: 2660 Marine Way, Suite 200

Mountain View, CA 94043

Signature: [Signature] Date: 12/6/99

PA 3024628 v1

ASSIGNMENT OF PATENT APPLICATION

JOINT

WHEREAS, ROBERT S. BEHL, of 361 Tioga Court, Palo Alto, CA 94036, EBEN L. KERMIT, of 2066 Oakley Avenue, Menlo Park, CA 94025, hereinafter referred to as "Assignors," are the inventors of the invention described and set forth in the below-identified application for United States Letters Patent:

Title of Invention: APPARATUS AND METHOD FOR TREATING TUMORS  
NEAR THE SURFACE OF AN ORGAN

Date(s) of execution of Declaration: December 8, 1999 (fill-in)

Filing Date: July 14, 1999

Application No.: 09/354,379 ; and

WHEREAS, RadioTherapeutics Corporation, a corporation of the state of California, located at 2660 Marine Way, Suite 200, Mountain View, California, 94043, hereinafter referred to as "ASSIGNEE," is desirous of acquiring an interest in the invention and application and in any U.S. Letters Patent and Registrations which may be granted on the same;

For good and valuable consideration, receipt of which is hereby acknowledged by Assignors, Assignors have assigned, and by these presents do assign to Assignee all right, title and interest in and to the invention and application and to all foreign counterparts (including patent, utility model and industrial designs), and in and to any Letters Patent and Registrations which may hereafter be granted on the same in the United States and all countries throughout the world, and to claim the priority from the application as provided by the Paris Convention. The right, title and interest is to be held and enjoyed by Assignee and Assignee's successors and assigns as fully and exclusively as it would have been held and enjoyed by Assignors had this Assignment not been made, for the full term of any Letters Patent and Registrations which may be granted thereon, or of any division, renewal, continuation in whole or in part, substitution, conversion, reissue, prolongation or extension thereof.

Assignors further agree that they will, without charge to Assignee, but at Assignee's expense, (a) cooperate with Assignee in the prosecution of U.S. Patent applications and foreign counterparts on the invention and any improvements, (b) execute, verify, acknowledge and deliver all such further papers, including patent applications and instruments of transfer, and (c) perform such other acts as Assignee lawfully may request to obtain or maintain Letters Patent and Registrations for the invention and improvements in any and all countries, and to vest title thereto in Assignee, or Assignee's successors and assigns.

Assignors hereby authorize and request Townsend and Townsend and Crew LLP, Two Embarcadero Center, 8<sup>th</sup> Floor, San Francisco, CA 94111-3834, to insert herein above the application number and filing date of said application when known.

IN TESTIMONY WHEREOF, Assignors have signed their names on the dates indicated.

Dated: 12/8/99

  
ROBERT S. BEHL

Dated: 12/8/99

  
EBEN L. KERMIT